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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.963 OF 1986

State of Maharashtra) ... Appellant
(Orig. Complainant)

Versus

1. Suresh Ambaji Sawant,)
Pyaribai Rajaramsingh Chawl,)
Bhatwadi, Near Market,)
Ghatkopar (West), Mumbai -)
400 084.)

2. Faiyazkhan @ Babu s/o.)
Karimkhan,)
Francis Wadi, Francis Chawl)
No.3,Ghumpha Road, Jogeshwari)
Mumbai.)

3. Mohamed Hussein Sk.Ramzanali,)
Prem Nagar, Sk.Ramzanali)
Chawl, Near Fish Market,)
Jogeshwari, Mumbai.)

4. Ashok Baburao Basankar,)
Laxmi Nagar, Laxman Bhaya)
Chawl, Parkhan Road No.2,)
Behind J.K. Chemicals, Thane.)

5. Abdul Gafoor Bandoo Karimsha)
Patel,)
Khawajbhai Chawl, Prem Nagar,)
Near Old Masjid, Jogeshwari)
(E), Mumbai.)

6. Rawloo Vithal Mayekar,)
Sk.Chawl No.8, Shankarwadi,)
Jogeshwari (E), Mumbai.)

7. Mansing Mahadeo Bhosale,)
2/14, Shabbir Ahmed Chawl,)
P.P. Dias Compound,)
Jogeshwari (E), Mumbai.)

8. Vishwanath Baburao Bhojne,)
Vishnu Park Chawl, Jiyer)
Mala Road, Patil Wadi,)
Andheri (E), Mumbai.)

9. Khashiram Vithoba More,)
Zapu Cluly Pillu Chawl,)
Santa Cruz (E), Mumbai.) ... Respondents
(Orig. Accused)

Mr. S.S. Tatkare, A.P.P. for the appellant-State.

Mr. P.P. Hudlikar for the respondents-accused.

CORAM: SMT. RANJANA DESAI &
D.B. BHOSALE, JJ.

DATED: 9TH JUNE, 2005.

ORAL JUDGMENT:- (**Per Smt. Ranjana Desai, J.**)

1. The respondents (for convenience, "original accused 1 to 9 respectively") were charged for offences punishable under section 120-B read with section 302 of the Indian Penal Code (for short, "the IPC") on the accusation of having agreed to do or caused to be done an illegal act i.e. to commit murder of one P.G. Bhaskaran. The accused were further charged that in pursuance of the said criminal conspiracy and in furtherance of common intention of accused 1 to 5, accused 1 to 3 committed the murder of the said Bhaskaran by intentionally causing his death and accused 1 to 5 thereby committed offence punishable under section 302 read with section 34 of the I.P.C. The accused were tried for the said offences in the Court of Sessions for Greater Bombay in Sessions Case No.293 of 1983. By judgment and order dated 11th & 12/8/1986, the learned Sessions Judge acquitted the accused of the charges levelled against them. Being aggrieved by the said judgment and order of acquittal, the State of Maharashtra has preferred this appeal.

2. The prosecution story may be briefly stated. Carona Sahu Company is situated at Gunfa Road, Jogeshwari (for short, "C.S.C."). PW-19 Ravindranath was working as the Factory Manager of C.S.C. during the period 1972 till 1/5/1985. Since 1979, C.S.C. Employees Union was the recognised union. In or about 1981 onwards, Dr. Datta Samant's Union known as Maharashtra Girni Kamgar Union tried to win over the workers of C.S.C. The said union was seeking recognition. The disgruntled workers, under the influence of accused 7, indulged in violent activities against loyal workers of the recognised employees union. They adopted go-slow tactics which affected the production of the company. There was a spate of violent activities. The loyal workers were assaulted. The company was forced to declare lockout until November, 1981.

3. According to the prosecution, the accused were responsible for creating violence in C.S.C. PW-26 Shivram Narayan Karkera, who was one of the office bearers of the Employees Union was also attacked by the accused. With the intervention of Labour Minister and others, the lockout which continued upto November, 1981 was lifted. The loyal workers, who had resumed the work, were under threats and, therefore, they had to live in the factory premises. Several criminal proceedings had to be initiated against various workers of Dr. Datta Samant's Union which included accused 3, 7 and 8.

4. Deceased Bhaskaran was in charge of production. He was entrusted with the job of maintaining discipline amongst the workers of C.S.C. In June, 1982, he was assaulted by workers of Dr. Datta Samant's Union. Thereafter, one policeman and one watchman used to escort him from his residence which was situated on the 3rd floor of Dr. Rane's building at Natvar Nagar Road No.1 at Jogeshwari to C.S.C. Either he was taken by the company's car or a taxi was sent to fetch him. His duty hours were from 7.00 a.m. to 4.00 p.m. and he was collected from his residence at about 6.30 a.m.

5. There was a settlement between the management and the employees regarding wages. On behalf of the management, the deceased took part in the negotiations. Final settlement was worked out in the middle of January, 1983. The deceased was liasoning between the workers and the management. The settlement was not liked by the workers supported by Dr. Datta Samant's Union. They were, therefore, against the deceased. According to the prosecution, on account of the settlement, the very existence of Dr. Datta Samant's Union in the C.S.C. was affected and, therefore, the disgruntled workers of C.S.C. wanted to get rid of the deceased.

6. On 23/1/1983 at about 6.30 a.m., as per the practice, one constable PW-14 Vilas Deshmukh along with watchman PW-15 Kailasnath Pathak left the C.S.C. in a taxi driven

by PW-12 Abdul Sattar to bring the deceased from his residence situated at Dr. Rane's building, Natvar Nagar Road No.1. At about 6.30 a.m., PW-33 Mrs. Sharda Bhaskaran, the wife of the deceased saw a taxi coming towards Dr. Rane's building and she informed the deceased about it. The deceased then took his shoulder bag containing tiffin box and his diary and went downstairs to board the taxi even before it had arrived at the gate of the building. As the deceased came downstairs, in the passage leading to the gate PW-33 Mrs. Sharda Bhaskaran saw the deceased being assaulted by accused 1, 2 and 3 with knives from the front side. She came inside the house and informed her son PW-31 Shaine about the assault and they both rushed downstairs. They saw that PW-15 Kailasnath Pathak was holding the deceased, who was in an injured condition. PW-14 Vilas Deshmukh was chasing three persons on Natvar Nagar Road No.1. He immediately returned as he could not catch them. Thereafter, PW-14 Vilas Deshmukh, PW-15 Kailasnath Pathak, PW-33 Mrs. Sharda Bhaskaran and PW-31 Shaine put the deceased in the taxi. The said taxi was taken to C.S.C. On the way, it was halted for a while to pick up the shoulder bag (article 6) containing two tiffin boxes (article 7) and a diary (article 8), which belonged to the deceased. When they reached the factory, at the gate, both PW-14 Kailasnath Pathak and PW-15 Vilas Deshmukh got down and PW-16 one Ramrao an official of C.S.C. boarded the taxi. The deceased was unable to speak. He only uttered the words "hospital, hospital".

7. At the Cooper Hospital, the deceased was examined by PW-34 Dr. Suresh Mehta. The deceased was immediately admitted in the Intensive Care Unit where he was treated by PW-35 Dr. Ajay Sarin. At about 7.30 a.m., the deceased succumbed to the injuries. At Cooper Hospital, PW-18 Rangrao Kamble questioned PW-33 Mrs. Sharda Bhaskaran about the injuries suffered by the deceased and he made an entry (Ex-35) in the E.P.R. Register. Constable PW-14 Vilas Deshmukh lodged a complaint, which is at Ex-48 at the Jogeshwari Police Station. The investigation was set into motion on the basis of complaint (Ex-48). After completion of the investigation, the accused came to be charged as aforesaid.

8. In support of its case, the prosecution examined as many as 46 witnesses. The star witness of the prosecution is PW-33 Mrs. Sharda Bhaskaran, who is the sole eye-witness. The prosecution story also rests on the evidence of PW-14 Vilas Deshmukh, PW-15 Kailasnath Pathak, PW-12 Abdul Sattar and PW-31 Shaine. Several witnesses were examined to establish visibility and availability of lights at the scene of the offence. The medical evidence consists of the testimonies of three doctors viz. PW-34 Dr. Suresh Mehta, PW-35 Dr. Ajay Sareen and PW-42 Dr. Krishnaji Gore, who had done the post-mortem on the corpse of the deceased. To establish the conspiracy, the prosecution examined PW-9 Natvarlal

Patel, PW-10 Pandurang Shedge, PW-19 Ravindranath, PW-26 Shivram Karkera, PW-36 Abbas Shaikh Aziz Hussein Shaikh, PW-37 Tukaram Mayekar, PW-38 Mrs. Satyavati Mayekar, PW-39 Mrs. Savita Dhuri and the handwriting expert PW-30 Maheshwar Wagh, who has proved the diary entry (Ex-93). According to PW-30 Maheshwar Wagh, the handwriting in the said diary is that of accused 4.

9. The defence of the accused was one of denial. After considering the evidence on record, the learned Sessions Judge was of the view that the prosecution has not established its case beyond reasonable doubt and, hence, he acquitted the accused. Hence, this appeal.

10. We have heard, at considerable length, Mr. Tatkare, the learned A.P.P. appearing for the State and Mr. Hudlikar, the learned counsel appearing for the accused. The learned A.P.P. contended that the impugned judgment and order deserves to be overturned inasmuch as it is perverse. He submitted that the learned Sessions Judge has wrongly ignored the cogent and credible evidence led by the prosecution which conclusively proves that the accused had conspired to kill the deceased. He submitted that several documents were produced by the prosecution to indicate that criminal proceedings were initiated against the accused because some of them had assaulted the loyal workers of C.S.C. and created unrest. He submitted that the learned Sessions Judge failed to take note of the fact that the accused were responsible for

slowing down the production of the company, which compelled the company to declare a lockout. It has also come on record that earlier the deceased was assaulted by the disgruntled workers. The other workers of C.S.C. were also assaulted. It has also been established that the settlement arrived at between the workers and the management in which the deceased had played a major role was not liked by the accused, who supported Dr. Datta Samant's Union and, therefore, they wanted to get rid of the deceased. The learned A.P.P. relied on the judgment of the Supreme Court in **R.K. Dalmia and others v. The Delhi Administration, AIR 1962 SC 1821** and contended that it is difficult to get direct evidence of conspiracy. Conspiracy is always hatched in secrecy and, therefore, the learned Sessions Judge fell into a grave error when he observed that the prosecution has failed to prove the conspiracy. According to the learned A.P.P., there was enough material on record from which conspiracy can be inferred.

11. The learned A.P.P. further urged that the learned Sessions Judge ought to have relied upon the evidence of PW-33 Mrs. Sharda Bhaskaran, the wife of the deceased. He submitted that PW-33 Mrs. Sharda Bhaskaran is the most natural witness. Being the wife, she has every reason to be present at the time of the incident. She has categorically stated that she had seen accused 1 to 3 assaulting the deceased. She has identified accused 1, 2 and 3 in the identification parade. There was no reason

to disbelieve this witness. It was also wrong to reject the identification parade evidence. The learned A.P.P. urged that the learned Sessions Judge has given undue importance to minor discrepancies in the evidence of PW-33 Mrs. Sharda Bhaskaran. He submitted that PW-33 Mrs. Sharda Bhaskaran was under trauma and it is possible that she has not immediately disclosed that her husband was assaulted by three persons. In the circumstances of the case, that fact cannot be taken against her. The learned A.P.P. further urged that the evidence of PW-14 Vilas Deshmukh and PW-15 Kailasnath Pathak and PW-31 Shaine provide the necessary corroboration to the evidence of PW-33 Mrs. Sharda Bhaskaran. On the basis of this evidence, the learned Sessions Judge ought to have held that the prosecution has proved its case beyond reasonable doubt. He, therefore, submitted that the impugned judgment and order may be set aside and the accused may be convicted in accordance with law.

12. As against this, Mr. Hudlikar, the learned counsel appearing for the accused contended that it is not necessary to interfere with the impugned judgment and order. He submitted that this court should not disturb the order of acquittal unless it comes to a conclusion that it is perverse and it suffers from patent illegalities. He submitted that the prosecution has not been able to prove that there was any preplanning or meeting of minds between the accused. There is

absolutely no evidence to indicate that the accused had conspired to do away with the deceased. Conspiracy is, therefore, not proved at all. He submitted that there is no cogent evidence even as regards the assault on the deceased by the accused. According to Mr. Hudlikar, PW-33 Mrs. Sharda Bhaskaran's evidence has rightly been rejected by the trial court as it is totally discrepant. Besides, there is no corroboration to the prosecution story in the form of recovery of weapons at the instance of the accused or clothes of the deceased being stained with blood of the deceased. In the circumstances, Mr. Hudlikar urged that this court should not disturb the impugned judgment and order.

13. Before we deal with the rival submissions, we must remind ourselves of the fact that we are dealing with an appeal against an order of acquittal and unless we come to a conclusion that the impugned order is perverse, it is not possible for us to interfere with it. It is well settled that if the view taken by the trial court is a reasonably possible view, even if some other view is possible, this court cannot interfere with the trial court's view. In this connection, we may usefully refer to the judgment of this court in **The State of Maharashtra v. Haribhau Krishnaji Deshmukh & Ors., in Criminal Appeal No.511 of 1987 delivered on 13/06/2003**, to which one of us (D.B. Bhosale, J.) is a party, where after taking a resume of relevant judgments, this court has discussed the scope and extent of powers of this court

under section 379 of the Criminal Procedure Code and has observed as under:

> "In our opinion, the consistent and well settled law on the point is that the High Court can interfere with the order of acquittal only when :
>
> 1) The appreciation of evidence by the trial court is perverse or the conclusion drawn by it cannot be drawn on any view of the evidence.
>
> 2) Where the application of law is improperly done.
>
> 3) Where there is substantial omission to consider the evidence existing on record.
>
> 4) The view taken by the acquitting court is impermissible on the evidence on record.
>
> 5) If the order of acquittal is allowed to stand, it will result the miscarriage of justice."

14. Bearing the above principles in mind, we shall now

deal with the rival submissions. So far as the prosecution case that there was a conspiracy to kill the deceased is concerned, we are of the opinion that the prosecution has failed to prove by leading cogent evidence that there was any conspiracy. Undoubtedly, the prosecution has examined witnesses, who have deposed that there was rivalry between the two unions. It has come on record that Dr. Datta Samant's Union was trying to get supremacy in the C.S.C. and, with that object in mind, the workers loyal to that union had created unrest in the C.S.C. Some of the accused had indulged in violent activities. We may briefly refer to that evidence which in our opinion falls short of the requirement.

15. PW-10 Police Naik Pandurang Shedge, who was attached to Jogeshwari police station and was on bandobast duty at the C.S.C. has, inter alia, stated that accused 7 and 8 used to attend the meetings of Dr. Datta Samant's Union and accused 6 used to take active part in such meetings. He had deposed that he attended the meeting held on 22/1/1983 which was addressed by accused 7 - Mansingh Bhosale. He has also deposed about another meeting which was held on 4/1/1983. PW-9 Natvarlal Patel, a worker of C.S.C. has deposed about the existence of the unions in C.S.C. and the strife between the two. He has stated that accused 5, 6, 7 and 8 were the active workers of Dr. Datta Samant's union and on 22/1/1983 he had seen accused 6, 7 and 8 near the Dena Bank. PW-19 Ravindranath, who was the Factory Manager of C.S.C. has given the entire

history of the rivalry between the two unions. He has stated that on account of the reign of terror created by Dr. Datta Samant's Union, the workers loyal to the C.S.C. had to live on the premises of the C.S.C. The workers loyal to Dr. Datta Samant's Union had forced the company to declare lockout because, on account of disruptive activities, the production had fallen down. In June, 1982, the deceased was assaulted by disgruntled workers. He has also stated that the negotiations were in progress between the management and the Employees Union and the deceased represented the management in the negotiations. This was not liked by the accused. On 22/1/1983, he had received a telephone message that accused 8 had put a board in the premises of C.S.C. stating that if Employees Union held a meeting of workers, the workers should not attend. On the same day, accused 7 held a meeting on the road in protest. This witness has produced documents which are at Ex-58 to Ex-80, which contain various charge sheets and orders of suspension and removal which speak about the assaults and acts of intimidation by various accused persons. He has also stated that the deceased had played a prominent role in bringing about the settlement of wage revisions. PW-26 Shivram Karkera who was working as Vice President of C.S.C. Union has also deposed about the union rivalry and the role of accused 7 in creating unrest. He has also deposed about the assault on the loyal workers by the activists of Dr. Datta Samant's Union and the lockout. According to him, his office was also attacked.

He has also stated that the deceased was the chief spokesman of the management. His evidence is rightly described as vague by the trial court. In the cross-examination, he has admitted that he only knew one accused and he did not know who were the accused who had attacked his office and two persons who were brought to his office by the watchman as persons who were responsible for the attack are not amongst the present accused. His evidence, therefore, does not help the prosecution. PW-37 Tukaram Mayekar, PW-38 Mrs. Satyavati Mayekar and PW-39 Savita Dhuri have however turned hostile and, therefore their evidence would have to be left out of consideration. A mention must be made of a diary (article 24) and the handwriting encircled (Ex-93) which is proved to be of accused 4. The encircled portion shows that on 22/1/1983 accused 4 was in the room of accused 6 Mayekar upto 10.00 p.m. and the second entry is that accused 1 Suresh Sawant, accused 2 Faiyaz, accused 3 Hussein, accused 4 Ashok and accused 5 Bandu Patel were to meet on 23/1/1983 for Sunday's case. There is, however, no evidence to establish that in fact a meeting took place on 23/1/1983. Therefore, mere diary entries do not prove conspiracy.

16. Several documents which have been produced by the prosecution do indicate that action was taken against some of the accused as they were indulging in violent activities. This evidence, in our opinion, does establish the rivalry between the two unions and the

violent activities of some of the accused. However, there is no evidence on record to establish that all the accused were active members of Dr. Datta Samant's union. There is also no cogent and credible material on record to suggest that prior to the incident in question, the accused had conspired to do away with the deceased. It is true that it is not always possible to get direct evidence of conspiracy as it is hatched in secrecy but, it was necessary for the prosecution to adduce some cogent evidence to establish that all the accused had planned to do away with the deceased on the date of the incident. There is absolutely no such evidence on record and, therefore, it is highly risky to conclude that all the accused had conspired to kill the deceased. On this issue, we concur with the trial court. We hold that the prosecution has failed to establish the conspiracy.

17. Before we go to the evidence of the eye-witness PW-33 Mrs. Sharda Bhaskaran, it is necessary to have a look at the evidence of PW-42 Dr. Krishnaji Gore, who had done the post-mortem on the corpse of the deceased. Dr. Gore was attached to P.H.C. Kharbav, Tal. Bhivandi as a Medical Officer at the relevant time. He conducted the post-mortem on the corpse of the deceased on 23/1/1983. On examination, he found the following external injuries.

1) Linear abrasion 1.5 cm. in the left ear outer and middle region.

2) Oblique incised wound 3.5" cm. x 1 cm.
deep on the left elbow back.

3) Oblique incised wound 7 cm. x 4 cm. 2.5 cm. x 7 cm. deep on the right side chest outer and of wound lies 3 cm. below nipple. Inner end lies 5 cm. away from mid of sternum.

4) Incised transverse wound 4 cm. x 1 cm. x 2 cm. deep on the right chest back 8 cm. below lower end of scapula.

5) Incised Transverse wound 4 cm. x 1 cm. x 2 cm. deep 6 cm. below the injury No.4 on the back side.

6) Oblique incised wound 2 cm. x .5 cm. x muscle deep on the right gluteal region.

On internal examination, he found the following injuries.

1) Fracture of the 6th rib.

2) Incised wound 7 cm. x 1 cm. in 6th intercostal space.

3) Incised wound 2 cm. x .5 cm. through and through of the right lung lower lobe.

Injuries to the right lung and injury to the inter costal muscles correspond to injury Abdomen:

Abdominal cavity contains blood 1 Littre.

1) Incised wound 3 cm. x .5 cm. x 5 cm. deep on the right lobe of liver.

2) Incised wound 3 cm. x .5 cm. x 5 cm. deep on the right lobe of liver.

3) Injury to diaphgram two places.

4) Injury to liver corresponds to Injury No.3 in column No.17."

18. According to him, the cause of death was shock and haemorrhage due to penetrating injury on the chest causing injury to right lung and liver. Dr. Gore has stated that the injury No.3 was on the front side. Injury Nos.2, 4, 5 and 6 were on the back of the deceased.

19. It is necessary now to see the evidence of PW-33

Mrs. Sharda Bhaskaran, the sole eye-witness. According to Mrs. Sharda Bhaskaran on 23/1/1983 she saw from the balcony the taxi coming towards Dr. Rane's building and immediately she handed over the shoulder bag to her husband and her husband came out of the house and went downstairs even before the taxi had arrived in front of the gate of Dr. Rane's building. According to her, when she went to the window in the passage, the taxi had not arrived and her husband told her that he would wait at the entrance of the building and he went downstairs. According to her, she was waiting near the window near the passage and within a minute or two, she saw the taxi lights and her husband proceeding towards the gate and, at the same time, she saw three persons coming from the side of the chawl. She saw those three persons assaulting her husband with weapons like knives. According to her, her husband was assaulted on the front side with four or five blows of knives. After seeing the assault, she rushed inside the house and informed her son PW-31 Shaine. She immediately came downstairs with him. She saw her husband lying outside the gate. Her son PW-31 Shaine proceeded further. She and her son PW-31 Shaine shouted and the police constable came running towards them. The watchman also returned and all of them put her husband in the taxi. According to her, by the time she came down, the assailants had run away. She has further stated that the taxi was taken to the C.S.C. On the way, she questioned her husband about the assailants but her husband did not answer except uttering the words

"hospital, hospital". The deceased was then taken to the Cooper Hospital where he was treated.

20. Now the question is whether PW-33 Mrs. Sharda Bhaskaran could have seen the assailants. It must be borne in mind that though the prosecution has tried to adduce evidence that there was light, the incident had taken place at 6.30 in the morning. Admittedly, PW-33 Mrs. Sharda Bhaskaran was standing on the third floor of the building. In our opinion, in such situation, her claim that she had seen the assailants needs to be examined carefully, particularly when it is her case that she had not seen the assailants earlier. She has categorically stated that when she came down, she did not see the assailants running away. She merely watched them from the third floor of the building. She has stated that she watched the assailants assaulting her husband for about one minute. This claim of PW-33 Mrs. Sharda Bhaskaran appears to be inherently improbable. If three persons were assaulting her husband, her instant reaction would be to rush to her son to inform him and then with the son try to rescue her husband. Her story that she stood there for one minute and observed the assailants does not stand to reason. She has stated that the assailants assaulted the deceased on the front side. Now this statement is not consistent with the medical evidence. We have already referred to the evidence of PW-42 Dr. Gore. He has stated that there was one injury on the front portion of the body of the deceased and all

other injuries were on the back of the deceased. Therefore, it is not understood as to how she could have seen the assailants assaulting the deceased from front side. PW-33 Mrs. Sharda Bhaskaran had proceeded to describe the manner of assault. According to her, the assailants who stabbed her husband in the stomach, held the knife in such a way that the knife pierced from downwards to upward direction and that she did not see the assailants giving a blow to her husband on any other part of her husband's body. Post-mortem report (Ex-137) does not indicate that there was any injury on the stomach portion. At one stage, she has stated that she saw the assailants assaulting her husband on stomach and chest but in further cross-examination, she has stated that she could only see the three persons assaulting but she did not see how many blows were inflicted by each of these assailants and on which part of her husband's body. When she was confronted with this, she has stated that her version that she had seen her husband being assaulted on the stomach and chest is the correct version. This inconsistent evidence of PW-33 Mrs. Sharda Bhaskaran creates a great doubt about her claim that she had witnessed the incident. It is true that the eye-witness account overrides the medical evidence but for that the eye-witness account must be of sterling quality. We do not find PW-33 Mrs. Sharda Bhaskaran's evidence to be of sterling quality.

21. It is also pertinent to note that PW-33 Mrs. Sharda

Bhaskaran has admitted that after the assault, till the next day, she did not disclose to anyone that three persons had assaulted her husband. She did not even tell the constable at the Cooper Hospital about it. PW-18 Head Constable Kamble has stated that Mrs. Bhaskaran did not tell him how many assailants were there. She admitted that several persons had come to meet her but she did not tell anyone about the assault. Even though she had suffered a great trauma, we feel that out of anxiety to see that the assailants of her husband are apprehended, normally if she had seen the incident, she would have told atleast the police that three persons had assaulted the deceased. Her silence till the next day is very significant. It indicates that she had not seen the incident.

22. According to the prosecution, PW-33 Mrs. Sharda Bhaskaran has identified these accused in the identification parade. In our opinion, this identification is also shrouded in suspicion. It appears from her evidence that the description which she has given of the accused in the court does not tally with the description which she had given in her police statement. In the cross-examination, she has given facial features of the assailants. She has stated that accused 3 had a scar on his forehead. PW-32 Mahesh Mule, the Special Executive Magistrate, who conducted the parade stated that he did not see this scar on the forehead of accused 3. PW-45 P.S.I. Hari Pawar, who arrested accused 3 at

Satara stated that he did not see the scar on the forehead of accused 3. If the scar was not visible then it is inconceivable that she would see this scar from a distance of about 40 feet at the time of assault and, if she had indeed seen the scar, in the description of the assailants given to the police, she would have mentioned it. She has omitted to mention the scar in the police statement. She has, therefore, sought to improve her evidence. She has also stated that one of the assailants had receding hair line but, this description was not given by her to the police. She has also stated that accused 2 is the fairest person and she was remembering this fact at the time when her statement was recorded but, she did not tell the police about it. She has tried to explain away all this by saying that she did not tell this to the police because the police did not ask about it. In our opinion, the identification parade can also not be relied upon. The identification parade is held in clear violation of the guide-lines. PW-32 Mahesh Mule, the Special Executive Magistrate has stated that all the accused were placed in one identification parade. He has admitted that he has no knowledge of the procedure about the holding of the identification parade. Admittedly, accused 3 had a scar on his forehead. Hence, in the identification parade, he should have placed accused 3 along with other persons having similar identifying marks. No such precaution was taken. The alleged identification made by PW-33 Mrs. Sharda Bhaskaran in such identification parade can hardly inspire confidence

and, hence, we reject it. We find it unsafe to rely on the evidence of PW-33 Mrs. Sharda Bhaskaran to come the conclusion that accused 1, 2 and 3 were the assailants of the deceased.

23. So far as PW-14 Vilas Deshmukh, the police constable is concerned, admittedly, he has not seen the accused assaulting the deceased. His case is that he had chased the assailants. If he had chased the assailants, in the nature of things, he could not have seen the faces of the assailants. Though he had given approximate ages of the assailants, he has not given the facial features of the assailants. His claim that he had seen the assailants is not acceptable. It is also pertinent to note that he had admitted that he was attending the police station everyday from morning between 23/1/1983 to 30/1/1983 and he had come to know the names of the accused. He came to know that one Bhojane was arrested by Jogeshwari police station on 23/1/1983 and one More and Mayekar were arrested on 27/1/1983. He came to know about the arrest of accused 1 to 3 on 27/1/1983 and 28/1/1983. The identification parade was conducted on 30/1/1983. Therefore, the possibility of this witness seeing the arrested suspects cannot be ruled out. We, therefore, find it very difficult to rely on the evidence of this witness.

24. PW-15 Kailasnath Pathak has partly not supported the prosecution. He had stated that he identified three

persons, but he did not admit that accused 1, 2 and 3 were the said three persons identified by him in the parade. Therefore, the evidence of this witness is of no use to the prosecution. PW-31 Shaine has not stated that he had seen the assailants. Therefore, his evidence is also of no use to the prosecution. PW-12 Abdul Sattar, the taxi driver has also not supported the prosecution.

His evidence does not help the prosecution.

25. Lastly reference must be made to the alleged discoveries. The blood group of the deceased was "O". So far as the clothes of accused 1, 4, 5 and 6 are concerned, they were seized under panchnama. PW-21, Narayan Suvarna, PW-22 Gaurishankar Patel and PW-23 Abdul Salim Abdul Jalil have deposed about this. There were blood stains on these clothes. However, the blood group of the blood found on them could not be identified. PW-24 Suresh Abanave and PW-25 Shaikh Ramzanali Hussein did not support the prosecution. At the instance of accused 3, two knives were recovered. However, panch witness PW-20 Ganesh Iyyar and PW-44 P.S.I. Vilas Shirke have stated that there were no blood stains on the knives. The chemical analyser's report does not say that blood of "O" group was found on these knives. At the instance of accused 6, one knife was recovered. PW-27 Ramanbhai Tak is the panch witness. He has turned hostile. Therefore, that panchanama is also not proved. Though human blood was found on this knife, the blood group could not be identified. It is the prosecution

case that shirt (article 14) was recovered on 31/1/1983 pursuant to the statement made by accused 1 and the chemical analyser's report states that the said shirt had human blood of "O" group. However, P.S.I. Shirke has deposed that shirt (article 14) was discovered at the instance of accused 3 whereas PW-43 S.I. Bhalekar has deposed that it was discovered at the instance of accused 1. PW-20, the panch witness Iyyar has deposed that it was discovered at the instance of accused 3. It is not conclusively established whether shirt (article 14) belongs to accused 3 or 1.

26. In the circumstances of the case, therefore, we feel that the prosecution has not proved its case beyond reasonable doubt. In any case, the view taken by the trial court is a reasonably possible view and, hence, it cannot be interfered with. We are unable to come to the conclusion that the appreciation of the evidence by the trial court is perverse or that there is any improper application of law to the facts. We also cannot hold that there is any omission to consider any evidence on record. This case does not fall in any of the categories laid down by this court in **Haribhau Krishnaji Deshmukh's case (supra)** warranting our interference. In the circumstances, the appeal is dismissed.

(SMT. RANJANA DESAI, J.)

(D.B. BHOSALE, J.)